IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. ____

RICHARD E. STEINBRECHER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioner, Richard E. Steinbrecher, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this case on May 25, 1970.

OPINIONS BELOW

The judgment of conviction and sentence of the United States District Court for the Northern District of Illinois is not officially reported. The opinion of the United States Court of Appeals for the Seventh Circuit entered on May 25, 1970, has not yet been officially reported. It is attached as appendix "A" to this Petition.

JURISDICTION

The judgment of the Court of Appeals affirming the judgment of conviction was entered May 25, 1970. A Petition for Rehearing En Banc was timely filed and was denied on July 31, 1970. (A copy of the order denying the Petition for rehearing is attached as appendix "B"). The jurisdiction of this Court is invoked under and pursuant to 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether it was prejudicial and reversible error for the trial court to deny petitioner's motion pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure for production of all "statements" (including oral but transcribed statements and notes or memoranda of interviews) of co-defendant Laures where Laures was the moving and principal figure in the fraud allegedly aided and abetted by petitioner and where said statements may have contained evidence favorable to the accused or been helpful to petitioner in determining whether to call Laures as a witness.

CONSTITUTIONAL PROVISION AND RULE INVOLVED

Fifth Amendment to the Constitution of the United States:

> "No person shall be . . . deprived of life, liberty, or property, without due process of law . . ."

Federal Rules of Criminal Procedure, Rule 16(b):

> **(b) Other Books, Papers, Documents, Tangible Objects or Places.** Upon motion of a defendant the court may

order the attorney for the government to permit the defendant to inspect and copy or photograph books, papers, documents, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the government, upon a showing of materiality to the preparation of his defense and that the request is reasonable. Except as provided in subdivision (a), (2), this rule does not authorize the discovery or inspection of reports, memoranda, or other internal government documents made by government agents in connection with the investigation or prosecution of the case, or of statements made by government witnesses or prospective government witnesses (other than the defendant) to agents of the government except as provided in 18 U.S.C. 3500.

STATEMENT

Petitioner was charged in a two count indictment with the offense of aiding and abetting (18 U.S.C., § 2) co-defendant John Laures in participating in the proceeds of two real estate mortgage loans in violation of 18 U.S.C. 1006.

Prior to trial petitioner moved, pursuant to Rule 16(b) of the Federal Rules of Criminal Procedure, for production of relevant documents, including the reports of oral statements given by Laures to F.B.I. agents. In the trial court the government admitted to the existence of reports of agents' interviews of Laures, but opposed this motion on the ground that the reports were not "statements" of Laures and were in any event not producible under Rule 16(b). The motion was denied. Subsequently, prior to trial, the government exhibited to trial counsel for peti-

tioner two reports of agents concerning interviews with Laures. The record does not show whether these were all of the statements of Laures in the possession of the government. Prior to trial Laures was allowed to plead *nolo contendere*. Petitioner was tried to the court and was found guilty on both counts of the indictment.

The evidence showed that in September of 1962 Crystal Lake Savings and Loan Association (Crystal), of which Laures was President, made a real estate mortgage loan to Frank Howard, Jr., a neighbor of Laures, in the amount of $225,000. Crystal issued checks in the amount of $55,000, to the mortgagee of the property to pay off an outstanding mortgage, and $160,000, to Howard and petitioner, as escrowee. Petitioner, who had represented Laures on various business transactions, deposited the $160,000 check in his law firm checking account. A check in the amount of $70,000 was issued from petitioner's account to the vendor of the property. The balance of the loan proceeds was used to pay personal obligations of Laures.

Petitioner testified that the check had been brought to his office by Howard and that he had disbursed the proceeds according to a list prepared and given him by Howard. He testified that he wrote the checks, as requested, and gave them to Howard.

In July of 1963, another loan was made by Crystal to Howard for the purpose of purchasing another parcel of property. The proceeds of the loan were again made payable to Howard and petitioner (as escrowee) and the check was deposited in the law firm account of petitioner. Petitioner used part of the loan proceeds to purchase cashier's checks to close the deal for the purchase of the property and disbursed the remainder in payment of Laures' personal debts.

Petitioner testified that in this second transaction he was likewise acting on behalf of and at the direction of Howard who had told him how to disburse the proceeds.

Howard, who had been previously indicted along with petitioner and Laures but against whom the charges had been dismissed, testified as a witness for the government during its case in chief. He testified that he had given Laures, his neighbor and friend, permission to use his name in the purchase of the property, and had signed certain forms in blank and given them to Laures and had given him some of his letterheads for use in handling the deal. Howard admitted that he had twice previously lied to F.B.I. agents concerning his role in the transactions. He admitted that he had also lied during a deposition given in 1965 when he admitted to being the purchaser of the second parcel of property—and also admitted to receiving certain amounts of money from Laures during 1962 and 1963. Following the testimony of petitioner, Howard was not recalled as a government rebuttal witness.

REASONS FOR GRANTING THE WRIT

THIS CASE PRESENTS AN IMPORTANT ISSUE OF FIRST IMPRESSION IN THIS COURT, NAMELY, WHETHER RULE 16(b) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE REQUIRES PRODUCTION OF A NON-WITNESS CO-DEFENDANT'S STATEMENTS IN THE POSSESSION OF THE GOVERNMENT.

Petitioner respectfully requests this Court grant the petition to review the judgment of the United States Court of Appeals for the Seventh Circuit and consider for the first time the scope and interpretation of Rule 16(b) of the Federal Rules of Criminal Procedure. Specifically, petitioner requests this Court consider and decide that (particularly under the circumstances of this case) it is an abuse of discretion for a trial court to deny a defendant's motion, pursuant to Rule 16(b), for production of the statements of his co-defendant who was not called as a witness[1] (the person whom petitioner allegedly aided and abetted).

A. The Issue Is One Of First Impression In This Court:

Since adoption of the 1966 amendments to the Federal Rules of Criminal Procedure, this Court has yet to render

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1. Assuming the co-defendant was called as a government witness the statement involved would, necessarily, have been producible pursuant to the provisions of 18 U.S.C. § 3500, although such production would not have been required until after testimony on direct examination. This observation draws additional attention to the point of this argument: the government by not calling the co-defendant as a witness was successful in withholding his statements.

a decision as to the scope and application of Rule 16 (relating to discovery by defendants). While this Court has spoken by way of dicta to the issue of the issue of the scope of Rule 7(f) (Bills of Particulars) (See *Will* v. *United States*, 389 U.S. 90 (1967) and has likewise spoken to the meaning of Rules 8 and 14 (See *Schaffer* v. *U.S.*, 362 U.S. 511 (1960), the absence of a decision from this Court on Rule 16 is conspicuous in view of the ever increasing emphasis upon pretrial discovery in criminal cases. (See *American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Discovery and Procedure Before Trial*). Accordingly, a decision by this Court in this case is both appropriate and desirable and indeed necessary to the proper interpretation and application of Rule 16 for the trial courts—an interpretation necessary in an appreciation of the general involvement and interpretation of Rule 16 in most criminal cases.

B. Statements Of Co-Defendants Are Within The Scope Of Discovery Contemplated By Rule 16(b).

Rule 16(b), as pertinent here, provides for discovery of reasonable requests for ". . . papers [or] documents . . . material to the preparation of . . ." the defense. The statements of Laures were unquestionably "papers [or] documents" in the possession of the government. The materiality and reasonableness of the request is apparent in a mere reading of the request which specifically itemizes the statements of the person possessing the most extensive

and complete knowledge of the circumstances surrounding the alleged offense.[2]

Moreover, assuming *arguendo* the Rule 16(b) requirements of materiality and reasonableness were less than satisfied at the time the motion was initially filed, the materiality and reasonableness of the request became necessarily and painfully obvious during the trial when all the facts were ascertainable only with reference to Laures' testimony. Subsection (g) of Rule 16 imposes upon the government a continuing duty to disclose. Necessarily then the government should have produced and the court was required to have ordered production of Laures' statements.

The government responded to petitioner's motion arguing against the disclosure requested. Importantly, the government's response *admitted* to the existence and possession by the government of oral transcribed statements given by Laures. (Government's Answer to Defendant's Motion for Discovery and Inspection, A. 10-12). The gov-

2. After arraignment and prior to trial petitioner, citing Rule 16 (Fed. R. Crim. P.) moved for production of:

"6. Any signed statement of defendant John Laures given to an agent or employee of the United States Government.

7. Any unsigned oral but transcribed statements by defendant John Laures given to an agent or employee of the United States Government, or any electronic recording thereof.

8. Any notes taken by any agent or employee of the Federal Government, during an interview with or interrogation of the defendant John Laures." (A. 9-10). ("A" refers to the Appendix of petitioner filed with the Court of Appeals below.)

ernment contended, however, that inasmuch as the statements by Laures were unsigned they did ". . . not constitute a statement of the defendant under Rule 16, as amended, effective July 1, 1966." (Government's Answer to Defendant's Motion for Discovery and Inspection. A. 11). As to the notes of the agents who took the statements from Laures (as distinguished, apparently, from the statements themselves), the government objected to discovery stating the notes to be ". . . the work product of the agents taking the interviews and not producible under any interpretation of Rule 16." (Government's Answer to Defendant's Motion for Discovery and Inspection. A. 11-12).

Each and both of the government's contentions were and are a misstatement of its requirements under Rule 16. Unfortunately, the trial judge accepted the government's arguments and refused to grant petitioner's Rule 16 motion. The attendant result was a denial to petitioner (and consequently the court) of the necessarily probative statements by Laures. This denial standing alone should warrant reversal of petitioner's conviction in accordance with *United States* v. *Isa*, 413 F. 2d 244 (7th Cir. 1969).

The government's trial court contention that Laures' failure to sign the document containing his statement denied it the status of a Rule 16 statement is misleading if not inaccurate. Rule 16(b) (unlike 18 U.S.C. Sec. 3500 which the government apparently had reference to) does not limit production to statements. As already indicated the far more generic terms "papers" and "documents" are used.

Rule 16(b) requests are admittedly conditioned by a proper government claim that the material requested is covered by the "work product" exception to discovery. In

referring to this exemption to Rule 16(b) discovery, 8 Moore's Federal Practice-Cipes, Criminal Rules 16.03 (27): Exemptions (p. 16-18) observes this ". . . exemption embodies the 'work product' rule, which protects from disclosure a litigant's theories and thought processes contained in internal notes and memoranda relating to the case." (citations follow)

Certainly the government's attempted claim of the "work product" exception was not and could not have been sufficiently made as to Laures' statements given to agents. Laures' statement could not be characterized as containing the United States Attorney's "theories and thought processes." In any event the obligation to establish the existence of a "work product" exception is as it should be on the government who was claiming the benefit of the exception. No attempt is made, save for the statement of a conclusion, that Laures' statements were in part no less totally covered by the "work product" exception.

C. Where As Here Petitioner Is Charged With Aiding And Abetting The Co-Defendant (18 U.S.C. 2) Discovery Of All Statements Made By The Co-Defendant Is Particularly Appropriate.

Where as here co-defendant Laures was the principal and moving figure in the fraud allegedly aided and abetted by petitioner and where the evidence against petitioner was at best circumstantial and consisted entirely of documents and the testimony of accomplice Frank Howard (against whom a previous indictment had been dismissed, presumably in exchange for his testimony), who had admittedly previously lied about his role in the transactions involved in the charge, the trial's denial of petitioner's motion was particularly prejudicial.

Specifically, denial of the motion deprived petitioner of an essential criterion in determining whether or not to call Laures as a witness and quite possibly denied him (and indeed to the court) access to material helpful or favorable to defendant in violation of *Brady* v. *Maryland*, 383 U.S. 73 (1963).

Assuming *arguendo* that the verdict of guilty was warranted by the evidence, the fact remains the evidence against petitioner was at best circumstantial and more importantly was entirely made up of testimony of Frank Howard, Jr. Petitioner's guilt or innocence necessarily turned upon the relative accuracy and honesty of the conflicting testimony of Howard and petitioner. Notwithstanding Howard's admitting to having given false statements to the F.B.I., the trial judge elected to believe Howard and, necessarily, disbelieve petitioner.

Assuming this was the only posture in which the circumstances surrounding the two transactions could and should have been presented to the court, petitioner could find little objection in the finding of the trial court. However, there was more evidence—a great deal more evidence—that not only could, but more importantly should, have been introduced and heard by the court. Quite obviously we have reference to the testimony of Laures.

The testimony and documentary evidence in this case make one fact totally apparent: Laures was the moving and principal figure for whose benefit the violation of 18 U.S.C. 1006 was perpetrated. Petitioner and Howard were obviously involved in the related transactions though not necessarily the crime. Appreciating the conflict which inhered in their testimony, either the petitioner or Howard perjured themselves and apparently the other was acting without knowledge of the Laures fraud.

Obviously both the government and petitioner had the opportunity to call Laures as a witness. Both elected not to call Laures as their witness. In making their respective determination, however, they were guided and assisted by far different considerations and most importantly different degrees of knowledge as to what Laures' testimony would be. Stated most emphatically, the government knew what Laures' testimony would be in the light of all of his statements including those (if any) which were not shown to defendant. The record fails to demonstrate that defendant had equal and similar access to *all* statements of Laures.

The gist of this argument then directs itself to the government's failure to disgorge and permit defendant to inspect *all* prior statements given by Laures to and possessed by the government. By failing to produce the Laures' statements, a failure in itself contrary to Rule 16 (Fed. R. Crim. P.), the government effectively denied to petitioner the effective right to examine or possibly cross-examine Laures. That Laures was not only an important but a necessary witness is without question. His testimony —subject of course to effective cross-examination—was essential to a determination of the factual controversies created by the conflicting testimony of the petitioner and the government's witness Howard. Laures, and only Laures, was intimately involved in all of the major decisions and transactions related to this case.

Accordingly, the record demonstrates that where as here the statement's requested are those of a co-defendant who was the principal and moving figure in the alleged fraud and petitioner is charged merely with the substantive offense of aiding and abetting (18 U.S.C. § 2), the requirements of materiality and reasonableness of Rule

16(b) are met beyond any doubt and failure of the trial court to grant petitioner's motion was an abuse of discretion.

D. The Record Shows That Under The Circumstances Failure To Accord Petitioner Discovery Of The Co-Defendant's Statements May Have Violated The Rule Of Brady v. Maryland.

Without reaching the merits of petitioner's contention that denial of his motion for production of Laures' statements was error, the Court of Appeals held that defendant had ". . . not been deprived of any evidence that might have been helpful" (App. p. A-3) because defendant's trial counsel signed a stipulation that two reports of interviews by F.B.I. agents of Laures were shown to him at a pretrial conference of counsel for defendants and the government. Significantly, however, the stipulation does not state that *all* statements of Laures in possession of the government were being made available to counsel.

The court below predicates its conclusion that petitioner was not deprived of access to any helpful evidence upon the apparent assumption that there were no other statements of Laures which could be produced. Admittedly the court is correct in its observation that there ". . . is no evidence that the government had any other statements in its possession . . ." (App. p. A-3), but how could the record show or how could petitioner demonstrate the existence of other statements (perhaps favorable to the petitioner) in view of the trial court's denial of his motion and in view of the fact that the government-prepared stipulation did not preclude the existence of other statements?

The possibility, if not likelihood, that there *did exist* other statements of Laures, which were favorable to peti-

tioner is indicated by the shocking and cavalier response of the government to petitioner's argument to the Court of Appeals. Speaking to *Benefield* v. *United States*, 370 F. 2d 912 (5th Cir. 1966), cited in the government's brief, the government argued in answer to defendant contention as follows:

> "There, as here, defendant asserted the broad proposition that a defendant is entitled to inspect any *record* or *writing* in the possession of the United States which might tend to prove defendant's innocence."
>
> Brief for Appellee, p. 19

The argument, or even the suggestion, possibly and maybe even apparently reflecting the practice followed by the United States Attorney's office in this case, that petitioner is not entitled to inspect any record or writing *which might tend to prove petitioner's innocence*, demonstrates shocking ignorance of and failure to comply with the dictates of *Brady* v. *Maryland*, 383 U.S. 73 (1963). Importantly, in the context of this case, the very appearance of such a statement in the government's brief strongly suggests, contrary to the assumption upon which the court's opinion is predicated, that there did exist statements of Laures which may in fact have tended to prove petitioner's innocence or at least may have relegated to petitioner a lesser role in the scheme than that attributed to him by the government or have tended to impeach Howard. (See *United States* v. *Polisi*, 2nd Cir. 416 F. 2d 573, where it was recently held that *Brady* required production of conflicting statements of accomplices which relegated to defendant a "relatively minor role" in the offense charged and observed that *Brady* required production ". . . even though the testimony's primary effect would only be to

impeach the credibility of accomplices." *United States* v. *Polisi*, 416 F. 2d 573, 578).

Thus, it is respectfully submitted that the apparent assumption of the court that no other statements of Laures existed is highly suspect when viewed in light of the government's attitude toward its obligations under *Brady* as expressed in this case. Indeed, as respects the opinion of the Court of Appeals, petitioner takes issue only with the conclusion that the government possessed no additional statements of Laures, inasmuch as the opinion otherwise appears to support his contention. (The clear implication of the last sentence of the opinion is that the court accepted defendant's argument that any and all statements of Laures should have been produced and, *if there existed any statements which were not produced, defendant would have been* "deprived of . . . evidence that might have been helpful." (App. p. A-3).

Failure of the record to show whether or not the government had possession of any additional statements of Laures resulted of course from the court's denial of petitioner's Rule 16(b) motion, which in turn resulted from the government's erroneous interpretation of the rule as demonstrated above in Point B. *United States* v. *Isa*, 415 F. 2d 244 (7th Cir. 1969).

In sum, the petitioner properly moved, pursuant to Rule 16, for discovery and inspection of Laures' statements to the government. This motion, no doubt as the result of the court's reliance on the government's erroneous interpreta-

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3. "There is no evidence that the government has any other statements in its possession and, *therefore*, we find that defendant has not been deprived of any evidence that might have been helpful." (App. p. A-3). (emphasis supplied)

tion of Rule 16, was denied. As a result petitioner was initially denied the opportunity to review *all* statements of the person most informed as to the issues in controversy —an opportunity specifically made available to petitioner by Rule 16(b) and an opportunity obviously available to the government—and, in addition, appreciating that the government did subsequently make available to petitioner two reports of interviews with Laures, but did not state that *all* statements were being made available, petitioner may well have been deprived of the opportunity to inspect other statements favorable or helpful to petitioner and the court was deprived of the opportunity of determining conclusively whether or not petitioner was deprived of evidence which may have been helpful to him.

CONCLUSION

This petition presents not only an issue important to the determination of this case but a significantly broader question as to whether Rule 16(b) of the Federal Rules of Criminal Procedure contemplates—and where appropriate requires—production of a co-defendant's statements. Failure of the court below to reach and decide this issue is unfortunate, especially in view of the implication of the last sentence of the opinion that in the posture of this case Rule 16(b) did indeed require such production. This case, therefore, presents the opportunity to define the scope and meaning of subdivision (b) of Rule 16 which will aid district courts in ruling upon similar motions in future cases and remove the uncertainty which presently exists as respects the right to production of co-defendant's statements. Finally, the government's answer brief in the court below, apparently adopting the position that it has no obligation to produce all evidence which may tend to prove petitioner's

innocence, invites appropriate inquiry and action by this Court, in the exercise of its supervisory power over the administration of criminal justice in the district courts, as to the government's understanding of and compliance with *Brady* v. *Maryland*.

Respectfully submitted,

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Attorneys for Petitioner.

August, 1970

APPENDIX "A"

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SEPTEMBER TERM, 1969—APRIL SESSION, 1970

No. 17658

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

RICHARD E. STEINBRECHER,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

May 25, 1970

Before KILEY, CUMMINGS and KERNER, *Circuit Judges.*

KERNER, *Circuit Judge.* Defendant Richard E. Steinbrecher was indicted on two counts for aiding and abetting (18 U.S.C. §2) codefendant John Laures in obtaining loans on real estate in violation of 18 U.S.C. §1006. Laures' plea of *nolo contendere* was accepted prior to trial. Defendant Steinbrecher entered a plea of not guilty, waived his right to a jury trial and was found guilty on both counts. From this conviction, he appeals.

John Laures was president of the Crystal Lake Savings and Loan Association (Crystal) in 1962 and 1963. Steinbrecher was an attorney who represented Laures in various business transactions. On September 22, 1962, upon the recommendation of Laures, Crystal made a loan to Frank Howard, Jr. of $225,000 to purchase a piece of real estate located at 3345 N. Marshfield, Chicago, Illinois, from

Howard Hurwith at a price of $125,000. Hurwith testified that he never met Howard but negotiated the sale with Laures. Crystal issued a check for $55,000 to the mortgagee and a check for the remainder, 160,000, was issued to Howard and the defendant Steinbrecher as escrowee. The check, endorsed by the defendant,[1] was deposited in the bank account of defendant's law firm and from this account various disbursements were made by Steinbrecher: $70,000 was paid to Hurwith and the balance of the money was used to pay personal loans of Laures. The defendant Steinbrecher also prepared Laures' 1962 income tax return which reported income on the Marshfield property.

Crystal made another loan to Frank Howard on July 12, 1963, for the purpose of purchasing a parcel of real estate located at 3334 W. Ainslie Street, Chicago, Illinois, on the recommendation of Laures. The purchase price of the property was $128,805 and the amount of the loan was $255,000. The negotiations with the owner of the property were made by the defendant Steinbrecher. The loan proceeds check was endorsed by the defendant and deposited in his firm's account. Again all disbursements from the loan were made by Steinbrecher with the excess funds being used to pay off the personal obligations of Laures. Steinbrecher prepared Laures' 1963 income tax return which included reported rental income from both the Marshfield and Ainslie properties.

Howard testified that Laures was his neighbor and that Laures had asked him to hold certain properties in his name in order that Laures could get a better price. Laures did not testify at the trial.

Steinbrecher took the witness stand and said that he lacked knowledge of any unlawful acts. It was his impression that Howard purchased the real estate for himself. While the facts create some suspicion, he claims that he verified Howard's participation by calling a trust officer at the bank which was the trustee for the parcels

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1. There is a conflict in the evidence as to whether or not Howard endorsed the check.

of real estate. The reported conversation between Steinbrecher and the trust officer was stricken as hearsay and no attempt was made to have the trust officer testify.

Defendant contends that this court should reverse because the evidence is consistent with a reasonable hypothesis of innocence. We disagree. Looking at the evidence in the light most favorable to the government, we conclude that the evidence is sufficient to prove the defendant guilty beyond a reasonable doubt. *Glasser* v. *United States*, 315 U.S. 60, 80 (1942). Essentially, the issue that the defendant raised is that the district judge should have believed the defendant and not the government witnesses. However, the credibility of the witnesses is for the trial judge to determine and we think the evidence supports his verdict. *Glasser* v. *United States, supra.*

The defendant Steinbrecher complains that the government failed to produce the statements of co-defendant Laures which were in its possession as requested under F. R. Crim. P. 16(b), and as a result Steinbrecher was unable to call Laures to testify. The government admitted that there were two reports which embodied Laures' oral statements, but the government has supplemented the record here with a stipulation signed by Steinbrecher's trial attorney reciting that the government had shown the attorney these statements. There is no evidence that the government has any other statements in its possession and, therefore, we find that the defendant has not been deprived of any evidence that might have been helpful.

No other errors have been raised and thus the conviction is affirmed.

AFFIRMED.

A true Copy:
Teste:—

.....
Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX "B"

UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

Chicago, Illinois 60604

Friday, July 31, 1970

Before

Hon. ROGER J. KILEY, *Circuit Judge*

Hon. WALTER J. CUMMINGS, *Circuit Judge*

Hon. OTTO KERNER, *Circuit Judge*

No. 17658

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
v.
RICHARD E. STEINBRECHER,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

On consideration of the petition of defendant-appellant, Richard E. Steinbrecher, for a rehearing by the Court *en banc* in the above entitled appeal, and, no member of the panel and no judge in regular active service having requested that a vote be taken on the suggestion for an *en banc* rehearing, and the panel having voted to deny a rehearing,

IT IS ORDERED that the petition of the defendant-appellant for a rehearing in the above entitled appeal be, and the same is hereby denied.

SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
OCT 1 1970
E. ROBERT SEAVER, CLERK

No. 616

In the Supreme Court of the United States

OCTOBER TERM, 1970

RICHARD E. STEINBRECHER, PETITIONER

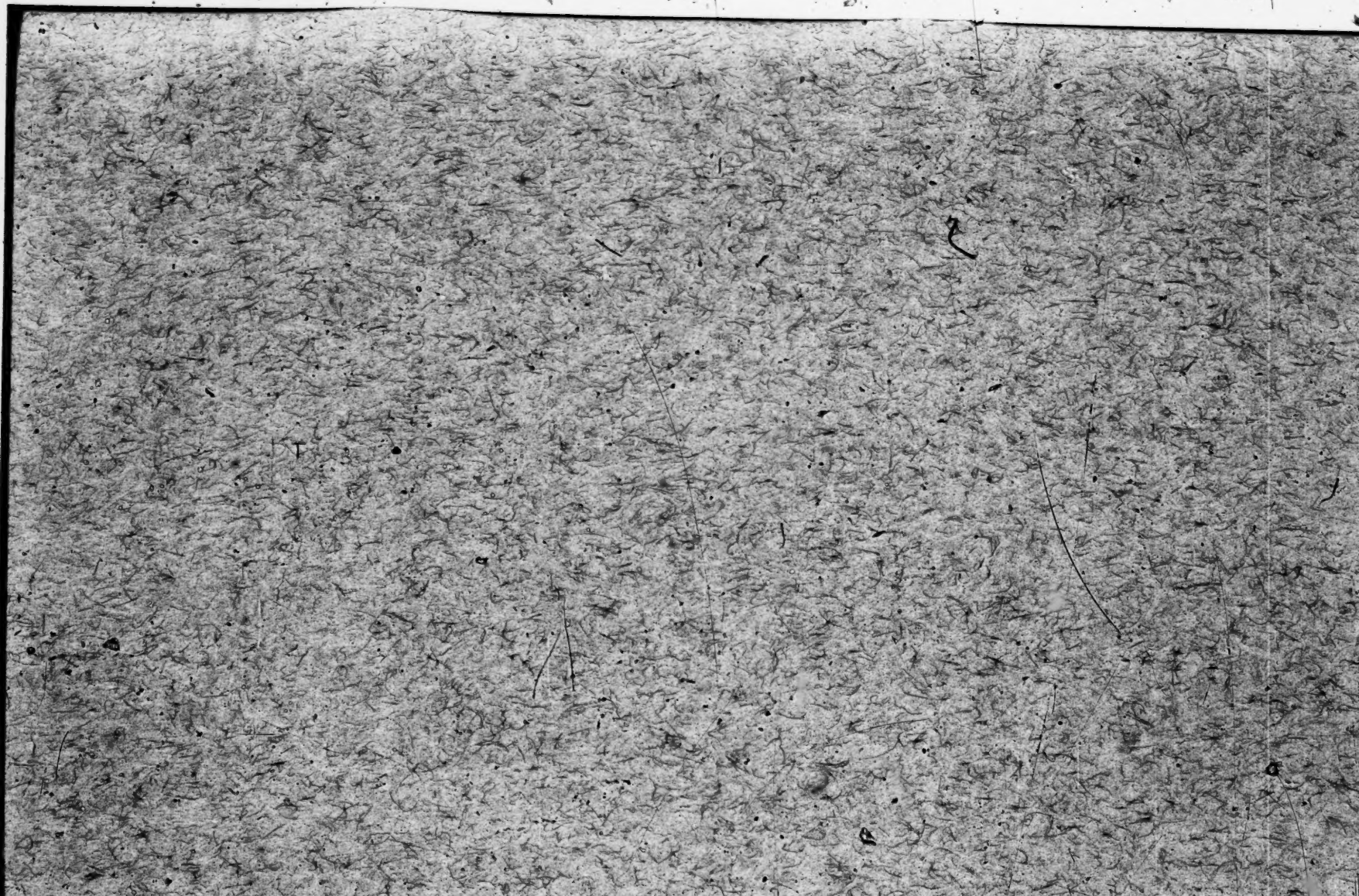
v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.



In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 616

RICHARD E. STEINBRECHER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury-waived trial in the United States District Court for the Northern District of Illinois, petitioner was convicted of having aided and abetted one Laures in participating in the proceeds of two real estate mortgage loans, in violation of 18 U.S.C. 2 and 1006. The court of appeals affirmed (Pet. App. A).

Petitioner's sole contention is that the trial judge improperly denied his pre-trial motion for discovery and inspection of F.B.I. reports of oral statements given by Laures, who pleaded nolo contendere.

405-618—70

The motion was denied but subsequently, before trial, the prosecutor exhibited to petitioner's counsel two reports concerning interviews with Laures. Petitioner concedes the correctness of the court of appeals' observation that there is "no evidence that the government had any other statements in its possession" (Pet. 13; Pet. App. A 3), but argues that possibly other favorable statements exist. The United States attorney informs us that he knows of no other statements. It is thus apparent, as the court below held, that petitioner was not prejudiced by the denial of his motion.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1970.